

"Et considérant qu'il n'appert pas que lors du jugement rendu contre le dit défendeur en faveur de la demanderesse, dans la Cour du Comté de Carleton dans la Province d'Ontario en date du six de février dernier, que le défendeur résida dans la dite Province d'Ontario, ou que la dite Cour du Comté de Carleton ait eu aucune juridiction sur le dit J. C. O'Hagan, qui réside dans la Province de Québec ;

"Considérant, en outre, que rien ne fait voir que le dit défendeur eut des biens dans la dite Province d'Ontario lors de l'institution des procédés dans la dite province et la reddition du dit jugement, et que les dits procédés ne paraissent avoir eu d'autre but que celui de multiplier les frais contre le dit défendeur, pratique abusive et qui doit être découragée ; la Cour rejette cette partie de la demande qui a trait aux frais de la poursuite faite dans la Province d'Ontario, et condamne le défendeur aux dépens de cette cause comme dans une cause de \$181, dont distraction, etc."

Brooke & McConnell for plaintiff.

J. R. Fleming for defendant.

(C. J. B.)

PROBATE, DIVORCE AND ADMIRALTY.

LONDON, June 10, 1890.

IN THE GOODS OF RHODA SLINN, deceased.

Testamentary Paper—Deed of Gift admitted to Probate.

This was a motion for a grant of administration with the will annexed to Elizabeth Walker of the following document :—

"To all people to whom these presents may come, I, Rhoda Slinn, do send greeting. Know ye that the said Rhoda Slinn, of 3 House, 3 Court, West John Street, in the parish of Sheffield, in the West Riding of the county of York, widow, for and in consideration of the love, goodwill, and affection which I have and do bear towards my loving friend, Elizabeth Walker, wife of Joseph Walker, of 5 Garden Street, of the same parish and county, file cutter, have given and granted and by these presents do freely give and grant unto the said Elizabeth Walker, her heirs, executors, or administrators, the

moneys invested in my name in the Sheffield Savings Bank, Norfolk Street, in the parish of Sheffield aforesaid, to have and to hold as her or their own without any manner of condition.

"In witness whereof I have hereunto put my hand and seal this 12th day of October 1889.

her

"Rhoda X Slinn.

mark.

"Signed, sealed, and delivered, in the presence of us and in the presence of each other,

"George Stuart.

"George Markley."

Rhoda Slinn died November 3, 1889. There was evidence that she had intended to make a will, but that she had been led to believe that a deed of gift would be cheaper. There was also evidence that at the time the deed of gift above set out was executed she said she wished a certain person in America to have £10.

Middleton, for the applicant, cited *Cock v. Cooke*, 1 P. & D. 241; *Robertson v. Smith*, 39 Law J. Rep. P. & M. 41; 2 P. & D. 43; *In the Goods of Coles*, 2 P. & D. 362. Apart from other evidence, the expression as to the person in America shows that the deceased did not intend the deed to operate until after her death.

The PRESIDENT: I am clearly of opinion that this paper ought to be admitted to probate. It is clear that extrinsic evidence may be admitted to explain an ambiguous paper of this kind, as there is always an inherent improbability that the person executing it intended the property to go away from him or her in his or her lifetime. In this case, as in the others that have been cited, the expressions are wholly inconsistent with an out-and-out gift. In *Robertson v. Smith* there was an expression of a wish that a certain person should have £50. In this case there is a reference to another person, and an expression of a wish that that person should have £10 if there was enough left. I am of opinion that this paper is testamentary, and I grant probate of it accordingly.